

# The Vermont Statutes Online

## Title 18: Health

### *Chapter 181: JUDICIAL PROCEEDINGS*

#### **§ 7611. Involuntary treatment**

No person may be made subject to involuntary treatment unless he is found to be a person in need of treatment or a patient in need of further treatment. (Added 1977, No. 252 (Adj. Sess.), § 18.)

#### **§ 7612. Application for involuntary treatment**

(a) An interested party may, by filing a written application, commence proceedings for the involuntary treatment of an individual by judicial process.

(b) The application shall be filed in the district court of the proposed patient's residence or, in the case of a nonresident, in any district court.

(c) If the application is filed under sections 7508 or 7620 of this title, it shall be filed in the district court in which the hospital is located.

(d) The application shall contain:

(1) The name and address of the applicant;

(2) A statement of the current and relevant facts upon which the allegation of mental illness and need for treatment is based. The application shall be signed by the applicant under penalty of perjury.

(e) The application shall be accompanied by:

(1) A certificate of a licensed physician, which shall be executed under penalty of perjury stating that he has examined the proposed patient within five days of the date the petition is filed, and is of the opinion that the proposed patient is a person in need of treatment, including the current and relevant facts and circumstances upon which the physician's opinion is based; or

(2) A written statement by the applicant that the proposed patient refused to submit to an examination by a licensed physician.

(f) Before an examining physician completes the certificate of examination, he shall consider available alternative forms of care and treatment that might be adequate to provide for the person's needs, without requiring hospitalization. (Added 1977, No. 252 (Adj. Sess.), § 19.)

### **§ 7613. Notice-Appointment of counsel**

(a) When the application is filed, the court shall appoint counsel for the proposed patient, and transmit a copy of the application, the physician's certificate, if any, and a notice of hearing to the proposed patient, his attorney, guardian, or any person having custody and control of the proposed patient, the state's attorney, or the attorney general, and any other person the court believes has a concern for the proposed patient's welfare. A copy of the notice of hearing shall also be transmitted to the applicant and certifying physician.

(b) The notice of hearing shall set forth the date and time of the hearing and shall contain a list of the proposed patient's rights at the hearing.

(c) If the court has reason to believe that notice to the proposed patient will be likely to cause injury to the proposed patient or others, it shall direct the proposed patient's counsel to give the proposed patient oral notice prior to written notice under circumstances most likely to reduce likelihood of injury. (Added 1977, No. 252 (Adj. Sess.), § 20.)

### **§ 7614. Psychiatric examination**

As soon as practicable after notice of the commencement of proceedings is given, the court on its own motion or upon the motion of the proposed patient or his attorney or the state of Vermont shall authorize examination of the proposed patient by a psychiatrist other than the physician making the original certification. The examination and subsequent report or reports shall be paid for by the state of Vermont. The physician shall report his finding to the party requesting the report or to the court if it requested the examination. (Added 1977, No. 252 (Adj. Sess.), § 21.)

### **§ 7615. Hearing**

(a) Upon receipt of the application, the court shall set a date for the hearing to be held within ten days from the date of the receipt of the application or 20 days from the date of the receipt of the application if a psychiatric examination is ordered under section 7614 unless the hearing is continued by the court.

(b) The court may grant either party an extension of time of up to seven days for good cause.

(c) The hearing shall be conducted according to the rules of evidence applicable in civil actions in the district courts of the state, and to an extent not inconsistent with this part, the rules of civil procedure of the state shall be applicable.

(d) The applicant and the proposed patient shall have a right to appear at the hearing to testify. The attorney for the state and the proposed patient shall have the right to subpoena, present and cross-examine witnesses, and present oral arguments. The court may, at its discretion, receive the testimony of any other person.

(e) The proposed patient may at his election attend the hearing, subject to reasonable rules of conduct, and the court may exclude all persons not necessary for the conduct of the hearing. (Added 1977, No. 252 (Adj. Sess.), § 22.)

#### **§ 7616. Appearance by state; burden of proof**

(a) The state shall appear and be represented by the state's attorney for the county in which the hearing takes place or by the attorney general at his discretion.

(b) The state shall have the burden of proving its case by clear and convincing evidence.

(c) The attorney for the state shall have the authority to dismiss the application at any stage of the proceeding. (Added 1977, No. 252 (Adj. Sess.), § 23.)

#### **§ 7617. Findings; order**

(a) If the court finds that the proposed patient was not a person in need of treatment at the time of admission or application or is not a patient in need of further treatment at the time of the hearing, the court shall enter a finding to that effect and shall dismiss the application.

(b) If the proposed patient is found to have been a person in need of treatment at the time of admission or application and a patient in need of further treatment at the time of the hearing, the court may order the person:

(1) hospitalized in a designated hospital;

(2) hospitalized in any other public or private hospital if he and the hospital agree; or

(3) to undergo a program of treatment other than hospitalization.

(c) Prior to ordering any course of treatment, the court shall determine whether there exists an available program of treatment for the person which is an appropriate alternative to hospitalization. The court shall not order hospitalization without a thorough consideration of available alternatives.

(d) Before making its decision, the court shall order testimony by an appropriate representative of a hospital, a community mental health agency, public or private entity or agency or a suitable person, who shall assess the availability and appropriateness for the individual of treatment programs other than hospitalization.

(e) Prior to ordering the hospitalization of a person, the court shall inquire into the adequacy of treatment to be provided to the person by the hospital. Hospitalization shall not be ordered unless the hospital in which the person is to be hospitalized can provide him with treatment which is adequate and appropriate to his condition.

(f) Preference between available hospitals shall be given to the hospital which is located nearest to the person's residence except when the person requests otherwise or there are other compelling reasons for not following the preference. (Added 1977, No. 252 (Adj. Sess.), § 24.)

#### **§ 7618. Order; nonhospitalization**

(a) If the court finds that a treatment program other than hospitalization is adequate to meet the person's treatment needs, the court shall order the person to receive whatever treatment other than hospitalization is appropriate for a period of 90 days.

(b) If at any time during the specified period it comes to the attention of the court, either that the patient is not complying with the order, or that the alternative treatment has not been adequate to meet the patient's treatment needs, the court may, after proper hearing:

(1) Consider other alternatives, modify its original order and direct the patient to undergo another program of alternative treatment for the remainder of the 90-day period; or

(2) Enter a new order directing that the patient be hospitalized for the remainder of the 90-day period. (Added 1977, No. 252 (Adj. Sess.), § 25.)

#### **§ 7619. Order; hospitalization**

An initial order of hospitalization shall be for a period of 90 days from the date of the hearing. (Added 1977, No. 252 (Adj. Sess.), § 26.)

#### **§ 7620. Application for continued treatment**

(a) If, prior to the expiration of any order issued in accordance with section 7623 of this title, the commissioner believes that the condition of the patient is such that the patient continues to require treatment, the commissioner shall apply to the court for a determination that the patient is a patient in need of further treatment and for an order of continued treatment.

(b) An application for an order authorizing continuing treatment shall contain a statement setting forth the reasons for the commissioner's determination that the patient is a patient in need of further treatment, a statement describing the treatment program provided to the patient and the results of that course of treatment.

(c) Any order of treatment issued in accordance with section 7623 of this title shall remain in force pending the court's decision on the application. (Added 1977, No. 252 (Adj. Sess.), § 27; amended 1997, No. 114 (Adj. Sess.), § 2.)

#### **§ 7621. Hearing on application for continued treatment; orders**

(a) The hearing on the application for continued treatment shall be held in accordance with the procedures set forth in sections 7613, 7614, 7615 and 7616 of this title.

(b) If the court finds that the patient is a patient in need of further treatment and requires hospitalization it shall order hospitalization for up to one year.

(c) If the court finds that the patient is a patient in need of further treatment but does not require hospitalization, it shall order nonhospitalization for up to one year.

(d) If at any time during the period of nonhospitalization ordered under subsection (c) of this section, it comes to the attention of the court, that the person is not complying with the order, or that the alternative treatment has not been adequate to meet the patient's treatment needs, the court may, after proper hearing:

(1) Consider other treatments not involving hospitalization, modify its original order, and direct the patient to undergo another program of alternative treatment for an indeterminate period, up to the expiration date of the original order; or

(2) Order that the patient be hospitalized, up to the expiration date of the original order.

(e) If the court finds that the patient is not a patient in need of further treatment, it shall order the patient discharged.

(f) This section shall not be construed to prohibit the court from issuing subsequent orders after a new application is filed pursuant to section 7620 of this title. (Added 1977, No. 252 (Adj. Sess.), § 28; amended 1997, No. 114 (Adj. Sess.), § 3.)

#### **§ 7622. Expert testimony**

(a) A mental health professional testifying at hearings conducted under this part may, if appropriately qualified, give opinion testimony and, notwithstanding section 1612 of Title 12, describe any information which he acquired in attending the patient.

(b) The facts or data in the particular case, upon which an expert bases an opinion or inference, may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. (Added 1977, No. 252 (Adj. Sess.), § 29.)

#### **§ 7623. Orders; custody**

All court orders of hospitalization, nonhospitalization and continued treatment shall be directed to the commissioner and shall admit the patient to his care and custody for the period specified. (Added 1977, No. 252 (Adj. Sess.), § 30.)

**§ 7624. Petition for involuntary medication**

(a) The commissioner may commence an action for the involuntary medication of a person who is refusing to accept psychiatric medication and meets any one of the following three conditions:

(1) has been placed in the commissioner's care and custody pursuant to section 7619 of this title or subsection 7621(b) of this title;

(2) has previously received treatment under an order of hospitalization and is currently under an order of nonhospitalization; or

(3) has been committed to the custody of the commissioner of corrections as a convicted felon and is being held in a correctional facility which is a designated facility pursuant to section 7628 of this title and for whom the department of corrections and the department of developmental and mental health services have jointly determined that involuntary medication would be appropriate pursuant to subdivision 907(4)(H) of Title 28.

(b) A petition for involuntary medication shall be filed in the family court in the county in which the person is receiving treatment.

(c) The petition shall include a certification from the treating physician, executed under penalty of perjury, that includes the following information:

(1) the nature of the person's mental illness;

(2) the necessity for involuntary medication, including the person's competency to decide to accept or refuse medication;

(3) any proposed medication, including the method, dosage range, and length of administration for each specific medication;

(4) a statement of the risks and benefits of the proposed medications, including the likelihood and severity of adverse side effects and its effect on:

(A) the person's prognosis with and without the proposed medications; and

(B) the person's health and safety, including any pregnancy;

(5) the current relevant facts and circumstances, including any history of psychiatric treatment and medication, upon which the physician's opinion is based;

(6) what alternate treatments have been proposed by the doctor, the patient or others, and the reasons for ruling out those alternatives; and

(7) whether the person has executed a durable power of attorney for health care in accordance with the provisions of chapter 121 of Title 14, and the identity of the health care agent designated by the durable power of attorney.

(d) A copy of the durable power of attorney, if available, shall be attached to the petition. (Added 1997, No. 114 (Adj. Sess.), § 4.)

#### **§ 7625. Hearing on petition for involuntary medication; burden of proof**

(a) A hearing on a petition for involuntary medication shall be held within seven days of filing and shall be conducted in accordance with sections 7613, 7614, 7615(b)-(e) and 7616 of this title.

(b) In a hearing conducted pursuant to this section, section 7626 or 7627 of this title, the commissioner has the burden of proof by clear and convincing evidence.

(c) In determining whether or not the person is competent to make a decision regarding the proposed treatment, the court shall consider whether the person is able to make a decision and appreciate the consequences of that decision. (Added 1997, No. 114 (Adj. Sess.), § 4.)

#### **§ 7626. Durable power of attorney**

(a) If a person who is the subject of a petition filed under section 7624 of this title has executed a durable power of attorney in accordance with the provisions of chapter 121 of Title 14 for health care, the court shall suspend the hearing and enter an order pursuant to subsection (b) of this section, if the court determines that:

(1) the person is refusing to accept psychiatric medication;

(2) the person is not competent to make a decision regarding the proposed treatment; and

(3) the decision regarding the proposed treatment is within the scope of the valid, duly executed durable power of attorney for health care.

(b) An order entered under subsection (a) of this section shall authorize the commissioner to administer treatment to the person, including involuntary medication in accordance with the direction set forth in the durable power of attorney or provided by the health care agent acting within the scope of authority granted by the durable power of attorney. If hospitalization is necessary to effectuate the proposed treatment, the court may order the person to be hospitalized.

(c) In the case of a person subject to an order entered pursuant to subsection (a) of this section, and upon the certification by the person's treating physician to the court that the person has received treatment or no treatment consistent with the durable power of attorney for health care for 45 days after the order under subsection (a) of this section has been entered, then the court shall reconvene the hearing on the petition.

(1) If the court concludes that the person has experienced, and is likely to continue to experience, a significant clinical improvement in his or her mental state as a result of the treatment or nontreatment directed by the durable power of attorney for health care, or that the patient has regained competence, then the court shall enter an order denying and dismissing the petition.

(2) If the court concludes that the person has not experienced a significant clinical improvement in his or her mental state, and remains incompetent then the court shall consider the remaining evidence under the factors described in subdivisions 7627(c)(1)-(5) of this title and render a decision on whether the person should receive medication. (Added 1997, No. 114 (Adj. Sess.), § 4.)

#### **§ 7627. Court findings; orders**

(a) The court shall issue an order regarding all possible findings pursuant to this section, and for persons subject to a petition pursuant to subdivision 7624(a)(3) of this title the court shall first find that the person is a person in need of treatment as defined by subdivision 7101(17) of this title.

(b) If a person who is the subject of a petition filed under section 7625 of this title has not executed a durable power of attorney, the court shall follow the person's competently expressed written or oral preferences regarding medication, if any, unless the commissioner demonstrates that the person's medication preferences have not led to a significant clinical improvement in the person's mental state in the past within an appropriate period of time.

(c) If the court finds that there are no medication preferences or that the person's medication preferences have not led to a significant clinical improvement in the person's mental state in the past within an appropriate period of time, the court shall consider at a minimum, in addition to the person's expressed preferences, the following factors:

(1) The person's religious convictions and whether they contribute to the person's refusal to accept medication.

(2) The impact of receiving medication or not receiving medication on the person's relationship with his or her family or household members whose opinion the court finds relevant and credible based on the nature of the relationship.

(3) The likelihood and severity of possible adverse side effects from the proposed medication.



(4) The risks and benefits of the proposed medication and its effect on:

(A) the person's prognosis; and

(B) the person's health and safety, including any pregnancy.

(5) The various treatment alternatives available, which may or may not include medication.

(d) If the court finds that the person is competent to make a decision regarding the proposed treatment or that involuntary medication is not supported by the factors in subsection (c) of this section, the court shall enter a finding to that effect and deny the petition.

(e) If the court finds that the person is incompetent to make a decision regarding the proposed treatment and that involuntary medication is supported by the factors in subsection (c) of this section, the court shall make specific findings stating the reasons for the involuntary medication by referencing those supporting factors.

(f) If the court grants the petition, in whole or in part, the court shall enter an order authorizing the commissioner to administer involuntary medication to the person. The order shall specify the types of medication, the dosage range, length of administration and method of administration for each. The order for involuntary medication shall not include electric convulsive therapy, surgery or experimental medications. The order shall require the person's treatment provider to conduct monthly reviews of the medication to assess the continued need for involuntary medication, the effectiveness of the medication, the existence of any side effects, and shall document this review in detail in the patient's chart.

(g) For a person receiving treatment pursuant to an order of hospitalization, the commissioner may administer involuntary medication as authorized by this section to the person for up to 90 days, unless the court finds that an order is necessary for a longer period of time. Such an order shall not be longer than the duration of the current order of hospitalization.

(h) For a person who had received treatment under an order of hospitalization and is currently receiving treatment pursuant to an order of nonhospitalization, if the court finds that without an order for involuntary medication there is a substantial probability that the person would continue to refuse medication and as a result would pose a danger of harm to self or others, the court may order hospitalization of the person for up to 72 hours to administer involuntary medication as ordered under this section.

(i) The court may authorize future 72-hour hospitalizations of a person subject to an order under subsection (h) of this section to administer involuntary medication for 90 days following the initial hospitalization, unless the court finds that an involuntary medication

order is necessary for a longer period of time. Such an order shall not be longer than the duration of the current order of nonhospitalization.

(j) A future administration of involuntary medication authorized by the court under subsection (i) of this section shall occur as follows:

(1) The treating physician shall execute and file with the commissioner a certification executed under penalty of perjury that states all the following:

(A) The person has refused medication.

(B) The person is not competent to make a decision regarding medication and to appreciate the consequences.

(C) The proposed medications, the dosage range, length of administration and method of administration.

(D) The substantial probability that in the near future the person will pose a danger of harm to self or others if not hospitalized and involuntarily medicated.

(2) Depending on the type of medication ordered, the commissioner shall provide two to 14-days' notice, as set forth in the initial court order, to the court, the person and the person's attorney. The notice shall be given within 24 hours of receipt by the commissioner of the physician's certification and shall state that the person may request an immediate hearing to contest the order. The person may be hospitalized in a designated hospital on the date specified in the notice for up to 72 hours in order to administer involuntary medication.

(k) An order for involuntary medication issued under this section shall be effective concurrently with the current order of commitment issued pursuant to section 7623 of this title.

(l) The treating physician shall provide written notice to the court to terminate the order when involuntary medication is no longer necessary.

(m) At any time, the person may petition the court for review of the order.

(n) As used in this section "household members" means persons living together or sharing occupancy. (Added 1997, No. 114 (Adj. Sess.), § 4.)

## **§ 7628. Protocol**

The department of developmental and mental health services shall develop and adopt by rule a strict protocol to insure the health, safety, dignity and respect of patients subject to administration of involuntary psychiatric medications in any designated hospital. This

protocol shall be followed by all designated hospitals administering involuntary psychiatric medications. (Added 1997, No. 114 (Adj. Sess.), § 4.)

**§ 7629. Legislative intent**

(a) It is the intention of the general assembly to recognize the right of a legally competent person to determine whether or not to accept medical treatment, including involuntary medication, absent an emergency or a determination that the person is incompetent and lacks the ability to make a decision and appreciate the consequences.

(b) This act protects this right through a judicial proceeding prior to the use of nonemergency involuntary medication and by limiting the duration of an order for involuntary treatment to no more than one year. The least restrictive conditions consistent with the person's right to adequate treatment shall be provided in all cases.

(c) It is the policy of the general assembly to work towards a mental health system that does not require coercion or the use of involuntary medication.

(d) This act will render the J. L. v. Miller consent judgment no longer applicable. (Added 1997, No. 114 (Adj. Sess.), § 1.)

**§§ 7601-7608. Repealed. 1977, No. 252 (Adj. Sess.), § 36.**

**§§ 7609, 7610. [Reserved for future use].**

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